

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.520 of 2018

Anbu .. Appellant/Petitioner

Vs.

1.M.Antony Joseph

2.Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Road,
T.Nagar Chennai 17.

3.K.Senthilkumar .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.01.2015, made in M.C.O.P.No.4794 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms.Ramya V. Rao

For R2 : Mr.S.Dhakshnamoorthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the Tribunal in the award dated 23.01.2015, made in M.C.O.P.No.4794 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.4794 of 2012, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.07.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging

to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,52,811/- as compensation to the appellant.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 23.01.2015, made in M.C.O.P.No.4794 of 2012, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant suffered fracture of right lower end of femur shaft and tibia, shortening of right leg. The Tribunal failed to take note of the fact that the appellant being the auto driver by profession, suffered from functional disability. P.W.2-Ortho Doctor deposed that the appellant could not do any work as he was doing earlier. The Tribunal erred in granting a sum of Rs.2,000/- per percentage of disability for the accident that took place in the year 2012. The Tribunal failed to grant any amount towards loss of income during treatment period, extra nourishment, attender charges, loss of amenities, future treatment and loss of earning power. The amounts granted by the Tribunal under different heads are very meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2-Doctor and the nature of injuries suffered by the appellant, granted loss of income for four months. The amounts granted by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. From the award of the Tribunal, it is seen that the appellant sustained grievous injuries all over the body and has taken treatment as inpatient for 14 days from 09.07.2012 to 22.07.2012. P.W.2-Doctor has assessed 60% disability suffered by the appellant. The Tribunal has awarded a meagre sum towards disability. The accident is of the year 2012. Hence, the amount granted towards disability is modified to Rs.1,80,000/- at the rate of Rs.3,000/- per percentage for 60% disability. The appellant contended that he was working as an auto driver at the time of accident and earning a sum of Rs.15,000/- per month. In the absence of any evidence, the Tribunal fixed the notional income of the appellant at Rs.6,000/- per month. The same is

enhanced to Rs.7,500/-. Hence, the loss of income granted by the Tribunal for a period of six months is enhanced to Rs.45,000/-. The amounts granted by the Tribunal towards transportation, extra nourishment, damages to clothing and loss of amenities are very meagre. The same are enhanced to Rs.10,000/-, Rs.10,000/-, Rs.1,000/- and Rs.15,000/- respectively. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are confirmed hereby. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	25,000/-	45,000/-	Enhanced
2.	Transportation	7,000/-	10,000/-	Enhanced
3.	Extra nourishment	7,000/-	10,000/-	Enhanced
4.	Damage to clothing	500/-	1,000/-	Enhanced
5.	Medical expenses	53,311/-	53,311/-	Confirmed
6.	Loss of amenities	5,000/-	15,000/-	Enhanced
7.	Pain and suffering	35,000/-	35,000/-	Confirmed
8.	Disability	1,20,000/-	1,80,000/-	Enhanced
	Total	2,52,811/-	3,49,311/-	Enhanced by Rs.96,500/-

9. In the result, the appeal is partly allowed and amount granted by the Tribunal at Rs.2,52,811/- is enhanced to Rs.3,49,311/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4794 of 2012. On such deposit, the appellant is permitted to withdraw the enhanced award amount of Rs.3,49,311/- along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. However,

it is made clear that the appellant is not entitled for any interest for the delay period on the amount enhanced by this Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

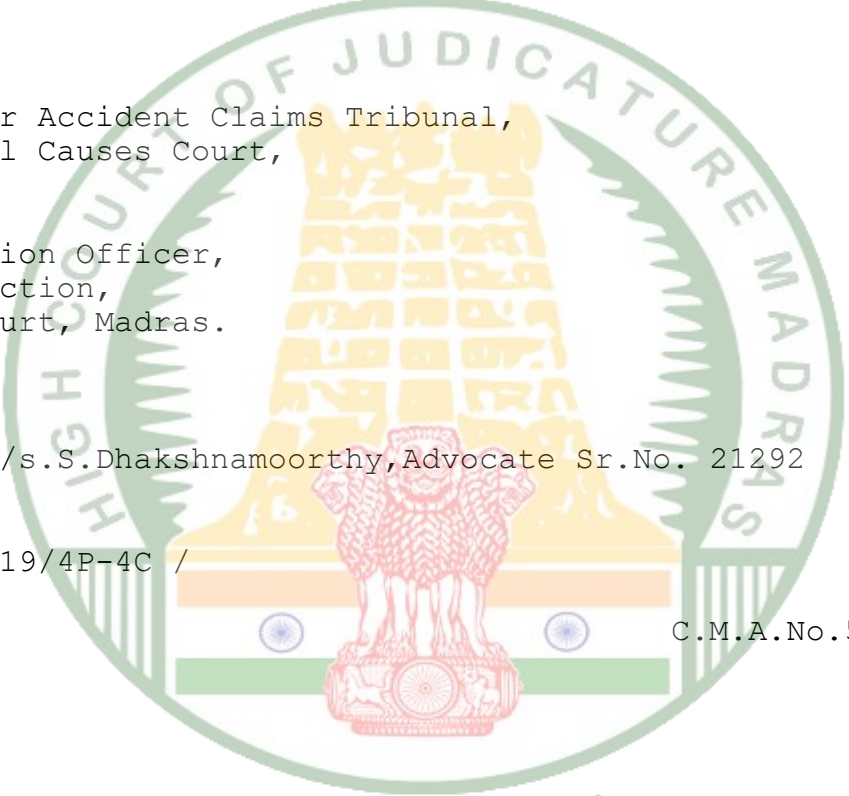
1.The Motor Accident Claims Tribunal,
III Small Causes Court,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to M/s.S.Dhakshnamoorthy,Advocate Sr.No. 21292

AKM/06.11.19/4P-4C /

C.M.A.No.520 of 2018



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